

AMENDMENT

U.S. Appln. No. 10/023,796

REMARKS

On page 2 of the Office Action, the Examiner objects to the Amendment filed December 21, 2001, as introducing new matter into the specification.

Specifically, the Examiner states that the definition of "living body" at page 3, lines 19-25 constitutes new matter; the phrase "manganese-containing natural material" at page 4, lines 1-19 constitutes new matter; and the phrase "additional effects...by taking advantage of the presence of an activity of these anti-oxidant components", at page 8, lines 9-22 constitutes new matter.

For the following reasons, Applicants respectfully traverse the Examiner's objection.

As to the definition of "living body" at page 3, lines 19-25, the Examiner is requested to note that an identical amendment was made to the specification in Grandparent Application No. 08/367,223 (now U.S. Patent 6,228,358) in the Amendment filed January 16, 1996. In the Office Action dated March 12, 1996, therein, it is indicated that this Amendment would be entered and further that "Applicants inserted language in the specification to define this phrase, but the language is all-encompassing". Thus, Applicants do not understand why the Examiner is objecting to this language in the present application.

As to the expression "manganese-containing natural material" at page 4, lines 1-19, this phrase was also added in the Amendment filed January 16, 1996, which was entered by the Examiner in the Grandparent Application. In the Office Action

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dated March 12, 1996, the Examiner indicated that the definition of "manganese-containing natural material" is not being questioned. Thus, Applicants do not understand why the Examiner is objecting to this language in the present application.

As to the phrase at page 8, lines 9-22, again this phrase was added in the Amendment filed January 16, 1996, and entered per the Office Action dated March 12, 1996. Thus, Applicants do not understand why the Examiner is objecting to this language in the present application.

Accordingly, Applicants respectfully submit that these expressions do not constitute new matter, and thus request withdrawal of the Examiner's objection.

In addition, at page 2 of the Office Action, the Examiner rejects Claims 7-10 under 35 U.S.C. § 112, second paragraph.

Specifically, the Examiner states that Claims 7 and 8 are indefinite in view of the recitation "in the presence of a tea extract or a powdered tea". That is, the Examiner contends that it is doubted that the mere "presence" of a very diluted drop or two is sufficient to achieve any results different from providing any fermented milk or skim milk fermented with *L. plantarum*.

For the following reasons, Applicants respectfully traverse the Examiner's rejection.

The Examiner is requested to that in the Grandparent Application, the claims were limited to powdered tea provided in an amount such that about 5×10^8 - 5×10^{10} bacterial cells are present for 2-4 g of the powdered tea based upon 1 liter of milk

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Applicants hereby cancel the pending claims and substitute new Claims 11-13 which contain this language and correspond to the previously issued claims.

Accordingly, Applicants respectfully submit that the claims clearly and definitely recite the invention of interest, and thus request withdrawal of the Examiner's rejection.

On page 3 of the Office Action, the Examiner rejects Claims 7-10 under 35 U.S.C. § 103 as being unpatentable over Kuwabara taken with Hammes et al, ATCC Catalogue of Bacteria and Hara.

Specifically, the Examiner states that Kuwabara discloses a fermented milk product produced by a *Lactobacillus* strain in the presence of a tea extract. The Examiner contends that the product thereof would be identical to that claimed in the present invention since the strain taught in Kuwabara, i.e., *L. acidophilus* (*L. delbrueckii*), would be expected to possess catalase activity, as evidenced by Hammes et al. The Examiner further contends that the fermentation with the *Lactobacillus* strain continues after the tea extract and sugar are added to the fermented milk product, and thus the fermented product disclosed by Kuwabara and the claimed fermented milk are substantially similar. Hence, the Examiner concludes that it would have been obvious to modify the teachings of Kuwabara by providing a composition to a living body for its delicious flavor, better taste and better consistency, and for the expected benefit of providing antioxidation effect *in vivo*, as suggested by Hara to achieve the present invention.

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For the following reasons, Applicants respectfully traverse the Examiner's rejection.

Initially, it should be noted that the present claims are not directed to a fermentation product *per se*, but rather a method for producing *in vivo* antioxidation in a living subject. The cited references do not teach or suggest such an effect.

Applicants hereby amend Claims 7 and 8 (new Claims 11-13) substantially in accordance with the claims of U.S. Patent 6,228,358.

Accordingly Applicants respectfully submit that the present invention is not taught or suggested Kuwabara alone or when combined with the teachings of Hammes et al, ATCC Catalogue of Bacteria and Hara. Thus, Applicants request withdrawal of the Examiner's rejection.

In view of the amendments to the claims and the arguments set forth above, reexamination, reconsideration an allowance are respectfully requested.

The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

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Respectfully submitted,



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